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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/695.817

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Shinobu Tanaka

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EXAMINER

AMAYA, CARLOS DAVID

ART UNIT

PAPER NUMBER

2836

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,817

Applicant(s)

TANAKA, SHINOBU

Examiner

Carlos Amaya

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to amendments filed on 07/13/2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Berthiaume (US 6,772,061).

With respect to claim 1 Berthiaume discloses an apparatus for preventing an unqualified person from driving a vehicle (Column 2 lines 62-67, a key is give to a qualified person, thus an unqualified person, one without a key would not operate the vehicle), comprising: a marker detector (Data port 120) provided in the vehicle to detect a qualified person marker (Key 110, the person holding the key is a qualified person

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having the driving qualification) held by a driver having a driving qualification appropriate for driving the vehicle only when the driver holds the qualified person marker opposite the marker detector (Column 5 lines 49-54, Column 6 lines 66-67, Column 7 lines 1-10, the connection is made only when the key is opposite to the data port 120); and a control unit (Control Unit 130) for continuously monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person is not detected (Column 6 lines 54-64; See also claim 1 of Berthiaume; this embodiment is to show that the control unit takes a measure when the key is not detected or when is detected).

With respect to claim 2 Berthiaume discloses the apparatus as claimed in claim 1, wherein the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver (Column 4 lines 57-60; the indicators correspond to a measure taken by the Control unit, Column 7 lines 1-11. The measure appeals to the sense of sight of the driver to indicate a performance of the vehicle, when the control unit does not detect the proximity signal S20).

With respect to claim 3 Berthiaume discloses the apparatus as claimed in claim 1, wherein the measure is stopping the driving of the vehicle (Column 6 lines 60-65).

With respect to claim 4 Berthiaume discloses the apparatus as claimed in claim 1, wherein the measure comprises a warning for appealing to the sense of sight or the sense of hearing of the driver and the stopping of the driving of the vehicle is performed after the warning (Column 6 lines 66-67, Column 7 lines 1-11; the visual warning as

discussed in the previous claim is the key indicator and then a stopping of the vehicle or other measures are taken).

With respect to claim 5 Berthiaume discloses the apparatus as claimed in claim 1, wherein the measure is released when the marker detector again detects the qualified person marker (Column 6 lines 54-64, the control unit takes a predetermined measure when a state occurs when the signal S20 from the key is detected, the key being closed to the data port and starts transmission of vehicle performance level when the key is sensed with the proximity signal from the key, thus if the signal is missing no connection exists and once the signal is detected again the process is resumed).

With respect to claim 6 Berthiaume discloses the apparatus as claimed in claim 1, wherein the control unit takes the measure when a state occurs in which the qualified person marker is not detected for a predetermined time period (Column 9 lines 23-29, this embodiment is used to show that a time-out period is provided after a proximity signal is detected for the deactivating the vehicle. One of ordinary skill in the art would have envisioned providing the time-out period when the proximity signal is not detected for a predetermined time period, with respect to the time-out signal when no activity is detected).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berthiaume in view of Roed (US 2005/0140513).

With respect to claim 7, Berthiaume discloses the apparatus as claimed in claim 1, except for a driver detector for detecting the presence or absence of a driver riding on the vehicle.

Roed discloses a detector for detecting the presence or absence of a person in the area 5, and then checking for the marker (Transceiver 8) and if the transceiver is not detected a stopped of the machine is performed (Page 1 Column 2 paragraph 0015).

It would have been obvious at the time the invention was made for a person of ordinary skill in the art to provide the movement detector (6,8) of Roed in the car of Berthiaume for detecting the presence or absence of the driver having qualification.

The suggestion or motivation for doing so would have been to ensure safety against unauthorized person that are able to enter a vehicle but don't have the qualifications to drive, i.e. they don't have a marker.

With respect to claim 8, Berthiaume discloses an apparatus for preventing an unqualified person from driving a vehicle, comprising a marker detector and a control unit for monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected. Berthiaume, however, does not disclose expressly that the marker

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detector is provided in the floor of a cab of the vehicle and the marker is provided in a shoe worn by a driver.

Roed discloses a marker detector provided in a floor (Transponder 6 provided in the floor of area 5) to detect a qualified person marker provided in a shoe (Foot transceiver 8 of person 10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the marker detector as disclosed by Berthiaume in the floor of the vehicle, and the marker (Transceiver 8) in the qualified persons' shoes.

The suggestion or motivation for doing so would have been to have the transmitter attach to a personal item of the driver, particularly the shoe of the driver, for ease of transport, and to reduce the possibilities of losing the transmitter, and to place the receiver near the driver, namely the cab.

With respect to claim 9 Berthiaume in view of Roed discloses the apparatus as claimed in claim 8, wherein the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver (Column 4 lines 57-60; the indicators correspond to a measure taken by the Control unit).

With respect to claim 10 Berthiaume in view Roed discloses the apparatus as claimed in claim 8, wherein the measure is stopping the driving of the vehicle (Column 6 lines 60-65).

With respect to claim 11 Berthiaume in view of Roed discloses the apparatus as claimed in claim 8, wherein the measure comprises a warning for appealing to the sense of sight or the sense of hearing of the driver and the stopping of the driving of the

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vehicle is performed after the warning (Column 6 lines 66-67, Column 7 lines 1-11; the visual warning as discussed in the previous claim is in the key indicators and then a stopping of the vehicle or other measures are taken).

With respect to claim 12 Berthiaume in view of Roed discloses the apparatus as claimed in claim 8, wherein the marker detector detects the qualified person when the qualified person marker provided in a shoe is disposed opposite the marker detector. Roed discloses a foot transceiver 8 located in a shoe and disposed opposite to the transponder 6 to detect the position of the transceiver 8; it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the marker detector on the floor of a cab and a marker in a shoe for checking a driver having qualifications. The suggestion or motivation would have been to have the transmitter attach to a personal item of the driver, particularly the shoe of the driver, for ease of transport, and to reduce the possibilities of losing the transmitter, and to place the receiver near the driver, namely the cab.

With respect to claim 13 Berthiaume discloses the qualified person marker for use with a vehicle equipped with a marker detector for preventing an unqualified driver from driving the vehicle (Column 2 lines 62-67, a key is give to a qualified person, thus an unqualified person, one without a key would not operate the vehicle).

Berthiaume, however, does not disclose expressly that the marker comprises a receiving antenna; a power source unit connected to the receiving antenna and configured to generate an electrical power signal in response to an electromagnetic signal coupling into the receiving antenna; a modulation unit powered by the electrical

power signal and configured to modulate a signal identifying the qualified person marker and indicating that a driver of the vehicle is qualified to drive the vehicle; and a sending antenna connected to the modulation unit and configured to transmit the modulated signal.

Roed discloses a receiving antenna (Transceiver 8 has to have an antenna since it is communicating with the main receiver/transmitter 14); a power source unit (In order for the transponder to generate a signal it has to have a power source; inductive charging) connected to the receiving antenna and configured to generate an electrical power signal in response to an electromagnetic signal coupling into the receiving antenna (Page 2 Column 1 paragraph 0024) a modulation unit powered by the electrical power signal and configured to modulate a signal identifying the qualified person marker and indicating that a driver of the vehicle is qualified to drive the vehicle (Transceiver 8 is configured to generate a signal in response to the transponder 6; a person holding the marker/transceiver is a qualified person, thus the modulation unit indicates that a qualified person, one holding the marker/transceiver is a qualified person); and a sending antenna connected to the modulation unit and configured to transmit the modulated signal (Page 2 Column 1 paragraph 0025).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the marker as disclosed by Berthiaume with a receiving antenna, a power source unit a modulation unit and a sending antenna to transmit modulated signals.

The suggestion or motivation for doing so would have been to have a more reliable means to communicate between the marker and marker detector, and to have a stronger signal that makes a stronger connection between the transmitter and receiver (marker and marker detector).

With respect to claim 14 Berthiaume in view of Roed discloses the qualified person marker claimed in claim 13, wherein the qualified marker is disposed in a shoe Roed (Figure 1 Transceiver 8) of the a driver qualified to drive the vehicle (Person 10 wearing the shoes and transceiver 8 have the qualification to be placed within an area 5, thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the invention disclosed by Roed in the vehicle as taught by Berthiaume and provide a driver having qualification with the shoes and transceiver 8). For the purpose of attaching the marker to a personal item, in this case the shoe as taught by Roed for ease of transport, and to reduce the possibilities of losing the transmitter, and to place the receiver near the driver, namely the cab.

With respect to claim 15 Berthiaume in view of Roed discloses the qualified person marker claimed in claim 13, wherein the receiving antenna receives the electromagnetic signal from a marker detector located in the vehicle only when the qualified person marker is placed opposite the marker detector Roed (Figure 2 shows a detailed picture of the transceiver 8 having a receiving antenna for receiving a signal from transponder 6, when the transceiver and the transponder are place opposite to each other).

Response to Arguments

6. Applicant's arguments filed 07/13/2006 have been fully considered but they are not persuasive.

7. The limitation that applicant argues regarding that a qualified person marker is "held by a driver having a driver qualification" for driving the vehicle "only when the qualified person marker is held opposite the marker detector" is taught by Berthiaume. A person holding the key disclosed by Berthiaume is a qualified person having a driving qualification to drive a vehicle, there is no way to check whether a person holding a key or holding a marker is qualified or not unless the marker/key is surgical implanted on the person so that only the qualified person holds the marker/key, furthermore it is disclosed by Berthiaume that the key is placed in a predetermined physical relation to the data port. It is respectfully submitted that claim 1 is anticipated by Berthiaume.

8. The argument regarding claim 2 that "the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver"; Berthiaume discloses the indicator is to indicate a corresponding performance of the key. It is understood that when marker/key changes state/performance the indicator in the key indicates this.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one would have combined the teachings of Berthiaume and Roed to provide a marker and marker detector in a vehicle's floor, and a qualified person having driving qualification holding the marker.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Amaya whose telephone number is (571) 272-8941. The examiner can normally be reached on M-F 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on (571)272-2800. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CA


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PRIMARY EXAMINER